Frequently Asked Questions (FAQs)

Post-Award / Compliance Questions

1. Are there any recoupment provisions in the Allocation Agreement for the allocated funds?

Yes. Section 6.4 of the Allocation Agreement mandates that if the participating state, territory or municipality is found in default of the Allocation Agreement, Treasury may recoup misused funds. Other sections of the Allocation Agreement disclose other circumstances that will limit access by a state, territory, or municipality' access to the allotted funds. Section 6.2 of the Allocation Agreement explains the discretionary remedies available to Treasury if the state, territory or municipality is found in default of the agreement. These remedies include the authority to withhold any future disbursements pending resolution of the event of default and the authority to reduce or suspend future disbursements. Events of default are listed in Section 6.1 of the Allocation Agreement and include making inaccurate, false or misleading information in the application or Allocation Agreement and failure to comply with any part of the Allocation Agreement, including failure to submit timely and accurate reports. Lastly, Section 7.1 of the Allocation Agreement covers termination of availability of SSBCI funds.

2. Under what circumstances may a financial institution lender use SSBCI funds to support a new extension of credit for the purpose of satisfying a prior obligation to the same financial institution or an affiliate? *Updated November 27, 2013 to reflect SSBCI position on loan purchases.*

Financial institution lenders are generally prohibited from refinancing an existing outstanding balance or previously made loan, line of credit, extension of credit or other debt owed by a small business borrower already on the books of the same financial institution (or an affiliate) into an SSBCI-supported CAP or OCSP. However, a financial institution lender may use SSBCI funds to support a new extension of credit that repays the amount due on a matured loan or line of credit when all the following conditions are met:

- the new loan or line of credit includes the advancement of new monies to a small business borrower (excluding closing costs);
- the new credit supported with SSBCI funding is based on a new underwriting of the small business's ability to repay and a new approval by the lender/investor;
- proceeds from the new credit may only be used to satisfy the outstanding balance of a loan or line of credit that has already matured or otherwise termed and the prior debt was used for an eligible business purpose, as defined by the SSBCI Policy Guidelines; and,
- the new credit has not been extended for the sole purpose of refinancing existing debt owed to that same financial institution lender.

SSBCI recommends that when a Participating State enrolls a loan that repays principal due under a loan previously made by the same financial institution or its affiliate, the Participating State or the financial institution lender should maintain documented substantiation that these four criteria were met.

The limitation on refinancing does not prohibit a financial institution lender from originating a new loan under an approved program and subsequently refinancing the same loan under any approved program. Additionally, the limitation also does not prohibit a financial institution lender from enrolling or refinancing previously made loans from another, non-affiliated financial institution into an approved program. When a Participating State uses SSBCI funds to purchase a loan from another, non-affiliated financial institution, the state must make a determination that the transaction is beneficial to the small business borrower.

3. What are the restrictions on borrowers' use of loan proceeds?
Updated August 5, 2013 to reflect SSBCI's position on using SSBCI funds to purchase goodwill.

Financial institution lenders must obtain an assurance from eligible borrowers or eligible investees that loan or investment proceeds from an approved program will only be used for business purposes including start-up costs, working capital, business procurement, franchise fees, equipment, inventory, and the purchase, construction, renovation or improvements of an eligible place of business. SSBCI funds may be used to purchase any tangible or intangible assets except for goodwill. Purchases of real estate (commercial or otherwise), securities or the acquisition or holding of any other real property for passive investment purposes, and lobbying activities are not considered eligible business purposes under an SSBCI-approved program. Furthermore, loan or investment proceeds may not be used to pay delinquent federal or state tax debts unless a repayment plan is in place and in no circumstances may be used to repay taxes held in trust or escrow (e.g., payroll or sales taxes). Loan or investment proceeds may not be used to reimburse funds owed to or purchase any portion of the ownership interest of any owner of the business. The prohibition on purchasing any portion of the ownership interest of an owner proscribes the acquisition of the shares of a company or the partnership interests of a partner when the proceeds of the loan or investment directly supported by SSBCI funds will go to any existing owner or partner.

4. The SSBCI Policy Guidelines require that at the closing of a loan or investment, that each small business borrower furnish an assurance that includes, among other things, that loan or investment proceeds will not be used for passive real estate investment. What is SSBCI's definition of "passive real estate investment"?

SSBCI has developed a definition of "passive real estate investment" in consultation with the Small Business Administration (SBA). SSBCI considers loan or investment proceeds to be used for "passive real estate investment" purposes when the proceeds from the loan or investment are used by an eligible small business to invest in real or personal property acquired and held primarily for sale, lease, or investment.

5. Can a small business borrower still deliver the assurance regarding passive real estate investment if the small business leases any portion of a building constructed, acquired or renovated with proceeds from an SSBCI-supported loan or investment?

If proceeds from an SSBCI supported loan or investment are used in the construction of a new building,

the eligible small business must occupy and use no less than 60% of the total rentable property following construction. If proceeds are used in the acquisition, renovation or reconstruction of an existing building, the borrower may permanently lease up to 49% of the rentable property to one of more tenants, if the eligible small business also occupies and uses no less than 51% of the total rentable property within 12 months following the real property acquisition. For example, Smith Bakery may use the proceeds of an SSBCI-supported loan to purchase an existing building with 4,000 square feet of rentable property that is currently leased to three businesses if at least 2,040 (51%) square feet will be occupied by the bakery itself within 12 months of acquiring the building.

Under either scenario, if an eligible small business chooses to lease an allowable portion of the rentable square footage to a tenant, the Participating State has the responsibility to ensure that the occupancy requirements of the eligible small business are met and supported by substantiating documentation, which may include lease agreements, blueprints, or similar documentation. Additionally, SSBCI-supported loan or investment proceeds may not be used to improve or renovate any of the rentable property that is leased to a third party.

SSBCI considers "rentable property" to be the total square footage of all buildings or facilities used for business operations excluding vertical penetrations (stairways, elevators, and mechanical areas that are designed to transfer people or services vertically between floors), and including common areas (lobbies, passageways, vestibules, and bathrooms). Rentable property excludes all outside areas.

6. Are there any exceptions to the use of proceeds prohibition on passive real estate investment? What about an entity or trust that does not directly engage in business operations, such as a real estate holding company, receiving an SSBCI-supported loan or investment for the purposes of acquiring real property?

In consultation with the SBA, SSBCI does permit an exception to the prohibition on passive real estate investment if an eligible passive company acquires and holds real property using SSBCI-supported loan or investment proceeds where 100% of the rentable property is subsequently leased to one or more operating companies. An eligible passive company can take any legal form or ownership, but it is typically a small entity or trust which does not engage in regular and continuous business activity, and which leases real or personal property to an operating company for use in the operating company's business. An operating company is generally actively involved in conducting business operations that is currently or about to be located on real property owned by an eligible passive company, or using, or about to use in its business operations, personal property owned by an eligible passive company. To meet the exception identified above, the following criteria must also be met:

- Both the eligible passive company and the operating company are eligible small businesses that meet all borrower or investor criteria established by the SSBCI Policy Guidelines; While 100% of

  the rentable property acquired and held using proceeds from the SSBCI-supported loan or transaction to the eligible passive company must be leased to one or more operating companies, an operating company may subsequently sublease no more than 49% of the total rentable square footage (in the case of an existing building, or no more than 40% in the case of new construction) to one or more unaffiliated tenants;

- The operating company is a guarantor or co-borrower on the SSBCI-supported loan or investment to the eligible passive company;
- Both the eligible passive company and the operating company must execute the borrower use of proceeds certification and sex offender certifications covering all principals, as co-borrower or guarantor;
- Each natural person holding an ownership interest constituting at least 20 percent of either the eligible passive company or the operating company provides a personal guarantee for the SSBCI-supported loan or investment; and,
- The eligible passive company and the operating company have a written lease with a term at least equal to the term of the SSBCI-supported loan or investment, including options to renew exercisable solely by the operating company.

It is the responsibility of the Participating State to ensure that all of the above requirements are met. SSBCI-supported loans or investments that do not provide documentary substantiation to all of the requirements related to the eligible passive company exception to the passive real estate investment prohibition on use of proceeds will be determined ineligible.

7. How can participating states, territories and municipalities comply with Section 4.4 of the Allocation Agreement regarding restrictions on the use of allocated funds with respect to prohibited loan purposes?

Section 4.4(e) of the Allocation Agreement specifies, "The participating state, territory or municipality shall not use any allocated funds for loans used to finance, in whole or in part, business activities prohibited by the SSBCI Policy Guidelines, Treasury regulations, including Treasury regulations promulgated after the date of this Allocation Agreement." As such, the SSBCI Policy Guidelines are the controlling document.

Treasury has created sample self-certifications that a participating state, territory or municipality may use in order to obtain certifications from the financial institution lenders and the small business borrowers. These certifications are not intended to replace or supersede any internal controls the participating state, territory, or municipality has in place. Rather, these certifications are provided for illustrative purposes and are available for use by the participating state, territory, or municipality according to their discretion. These sample certifications are attached as Annex 1 and 2 to this document.

8. May SBA-guaranteed loans or other federally guaranteed or insured loans be enrolled in approved state programs receiving SSBCI funds?

No. The SSBCI Policy Guidelines prohibit enrolling the unguaranteed portion of SBA- guaranteed loans in either a CAP or OCSP. This prohibition also applies to the unguaranteed portion of other federally guaranteed loans.

9. How do participating states, territories and municipalities comply with the Sex Offender certifications in Section 4.9 of the Allocation Agreement?

Section 4.9 of the Allocation Agreement specifies that "[Participating states, territories and municipalities must obtain]…(c) a certification from the private entity, including any financial institution, that the Principals of such entity have not been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911))."

Meaning of "private entity": Section 4.9(c) of the Allocation Agreement requires that both the financial institution lender and each borrowing entity certify to the participating state, territory or municipality that none of the Principals have been convicted to referenced sex offense.

Meaning of "Principals": For the limited purposes of Section 4.9 of the Allocation Agreement, Principal is defined as, " if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20% or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity."

Treasury has created sample self-certifications that a participating state, territory or municipality may use in order to obtain certifications from the financial institution lenders and the small business borrowers. These certifications are not intended to replace or supersede any internal controls the participating state, territory, or municipality has in place. Rather, these certifications are provided for illustrative purposes and are available for use by the participating state, territory, or municipality according to their discretion. These sample certifications are attached as Annex 3 to this document.

10. What restrictions and reporting requirements apply to use of SSBCI funds after the termination of the Allocation Agreement on March 31, 2017? *Updated October 29, 2014.*

The authorities and duties of Treasury to implement and administer the Program terminate on September 27, 2017. Further, Treasury expects that the expiration date of all Allocation Agreements will be March 31, 2017. Between January 1, 2017, and March 31, 2017, each participating state, territory or municipality must submit (1) its final annual report, (2) its final Federal Financial Report (SF-425), and (3) a summary of the performance results of the allocation, including a narrative of how or the extent to which the purpose of the allocation was accomplished using allocated funds.

In addition, each participating state, territory, or municipality must submit its final quarterly report by January 31, 2017. Participating states, territories, and municipalities will not, under any circumstances, be released from these reporting requirements early, even if a participating state, territory, municipality draws down or uses allocated funds prior to the expiration of the allocation time period.

Although the reporting requirements in Sections 4.7 and 4.8 of the Allocation Agreement terminate when the Allocation Agreement expires, the restrictions set forth in the Act, the Policy Guidelines, National Standards and SSBCI's Frequently Asked Questions will remain in effect and govern the original deployment of funds disbursed by the SSBCI program.

11. Will I be required to calculate my private leverage ratio for each annual report?

No. Treasury intends to automatically calculate each participating state's, territory's, or municipality's annual and cumulative private leverage ratio from the data provided by each participant's required Annual Report, as detailed in section 4.8 of the Allocation Agreement.

12. How much capital must participating lenders or investors have at risk under a CAP or OCSP?
Updated November 27, 2013 to reflect SSBCI's policy on calculating the private leverage ratio expectation over five years for modifications.

Financial institution lenders or other private investors must have at least 20% of their own capital at risk in any approved CAP or OCSP, in order to fulfill the requirement of the Act to have a "meaningful amount of their own capital at risk". This means that in the case of default of a loan or investment made to an eligible small business under an approved SSBCI program, a private lender or investor will be at risk for at least 20% of such loss. In the case of an OCSP venture capital or angel investment network, this capital-at-risk requirement applies at the level of the fund that makes the investment in eligible small businesses, not at the "fund of funds" level. For Allocation Agreement modifications, Participating States may calculate the private leverage ratio expectation of their proposed Approved State Programs over a maximum five-year time period from Treasury's approval of the proposed modification. Please also see SSBCI's revised Modification Procedures, revised November 22, 2013.

13. Are there prohibitions on combining a transaction supported with SSBCI funds with a loan guaranteed under the U.S. Small Business Administration (SBA) 7(a) or 504 loan programs or the U.S. Department of Agriculture (USDA) Business & Industrial (B&I) loan program?
Posted December 17, 2013. Effective February 17, 2014.

Yes. If a borrower receives a loan guaranteed by the SBA's 7(a) or 504 loan programs or the USDA's B&I loan program, SSBCI funds may not be used as credit support to a loan or investment *for the same purpose* as the SBA- or USDA-guaranteed loan. For example, a borrower may not use a loan guaranteed under SBA's 7(a) program and an SSBCI-supported loan to purchase the same real estate, including land and improvements. In contrast, a borrower may receive two sources of Federal support in two separate loans *if the proceeds for the two loans are for different purposes*. For example, if a borrower receives a loan guaranteed under the SBA 7(a) or 504 programs or the USDA B&I program to purchase real estate occupied by the borrower, the borrower also may receive an SSBCI-supported loan to purchase equipment.

Participating States should maintain documentation showing that the borrower used the loan proceeds from the two loans for different purposes. Examples of documentation include the description of the loan purpose in the two loan agreements or promissory notes, copies of checks from the lender payable to different vendors from the proceeds from the two loans or investments, or a statement signed by the lender/investor or borrower/investee prior to closing the SSBCI-supported transaction indicating the two different uses of the two loans or investments.

14. Are there prohibitions on enrolling the same loan or investment in more than one Approved State Program or using more than one Approved State Program to support multiple loans or investments for the same loan purpose? *Posted December 17, 2013. Effective February 17, 2014.*

Yes. One loan cannot be enrolled in more than one Approved State Program at the same time. In addition, a lender may not divide one loan into multiple agreements or notes, each enrolled in an Approved State Program, for the same loan purpose.

If, for example, a borrower receives two loans under separate Approved State Programs, the Participating State should maintain documentation showing that the borrower used the loan proceeds from the two loans for different purposes. Examples of documentation include the description of the loan purpose in the two loan agreements or promissory notes, copies of checks from the lender payable to different vendors from the proceeds from the two loans or investments, or a statement signed by the lender/investor or borrower/investee prior to closing the SSBCI-supported transaction indicating the two different uses of the two loans or investments.

15. Are there prohibitions on using SSBCI funds in combination with a transaction that generated tax credits, including a New Markets Tax Credit (NMTC) or Historic Preservation Tax Credit transaction? *Posted December 17, 2013. Effective February 17, 2014.*

Yes. An SSBCI-supported transaction cannot be used to increase the pool of funds that generates tax credits. An SSBCI-supported transaction can only be used outside the structure designed to leverage tax credits. For example, assume SSBCI funds support a loan to a community development entity (CDE). The CDE cannot then use the SSBCI-supported loan to make a qualified low community investment that generates tax credits for purposes of a NMTC transaction. If a given transaction supported with SSBCI funds meets program requirements, SSBCI funds may be used alongside a transaction that generates tax credits.

16. How does the $20 million restriction on credit support under OCSPs apply in general and when SSBCI may be providing support to one or more transactions within a larger financing? *Posted January 23, 2014.*

In accordance with section 3006(c)(4)(C) and (D) of the Small Business Jobs Act and section II of the *SSBCI Policy Guidelines*, an OCSP must target loans or investments with an average principal amount of $5 million or less and cannot provide credit or investment support if a given transaction exceeds $20 million. For approved State lending programs, the $20 million restriction applies to the principal amount of the loan directly supported by or funded with SSBCI funds, plus all other loans for the same loan purpose that close on or about the same date. Direct SSBCI support for a loan includes a guarantee, cash collateral, and loan participation (either purchased participation or companion participation loan). For equity investment programs, the $20 million restriction applies to a single investment round that includes an SSBCI-funded investment, including all classes of equity instruments that close on or about the same date. SSBCI support for an investment includes direct equity investments in small businesses made by a State or its contractors, as well as investments in small businesses made by privately managed funds in which the State invested SSBCI funds ("fund of funds" investments). The $20 million restriction cannot be avoided by dividing a larger loan into smaller loans or by creating separate

equity instruments within an investment round.

In addition, Participating States should be wary about participating in transactions that involve multiple loans or investments to affiliated entities that should be structured as a single loan or investment. One indicator that multiple loans or investments to affiliated entities should constitute a single transaction is common ownership and control between the entities, regardless of whether the owner's or owners' ownership percentages vary between the affiliated entities. Other indicators include cross-collateralization and substantially the same terms between the transactions. The examples and indicators are not exhaustive, and Participating States should use their judgment in assessing whether transactions exceed the $20 million restriction.

Treasury recognizes that each transaction is fact-specific and reminds the Participating State to assess each transaction carefully and to document the justification for participating in any transaction that could reasonably be viewed as exceeding the $20 million restriction.

17. Can a participating State cure a noncompliant use of SSBI funds? *Effective September 25, 2014.*

A Participating State may wish to un-enroll a particular transaction or use of administrative expenses from its SSBCI program account: (1) when the Participating State itself or SSBCI identifies a potentially noncompliant use of funds; or (2) when the Office of the Inspector General (OIG) identifies an instance of noncompliance or misuse not characterized as reckless or intentional.[2]

For situation (1), SSBCI will perform an analysis to determine whether the state's use of funds in question is noncompliant. SSBCI staff will consider the nature of the use of funds and the extent to which it was in accordance with the Small Business Jobs Act and with established policy guidance, including the *SSBCI Policy Guidelines*, the SSBCI Allocation Agreement, and the *National Standards for Compliance and Oversight.* Additional sources could include applicable frequently asked questions (FAQs) published by SSBCI, guidance distributed at a conference or on a conference call, and any other written guidance provided by Treasury to the Participating State, including via email. If SSBCI determines the instance of noncompliance constitutes potential misuse that may meet the level of "reckless" or "intentional", SSBCI will refer the case to the OIG to perform an audit. If the OIG finds that the misuse is reckless or intentional, it will issue a formal recommendation to SSBCI, recommending that the funds be recouped, as required by Section 3003(c)(1)(C)(ii) of the Small Business Jobs Act. For situation (2), the OIG already has conducted a misuse analysis, and SSBCI need not conduct one.

For both situations (1) and (2), the Participating State will be afforded an opportunity to provide SSBCI or the OIG additional information that will be used to determine whether a general event of default under the Allocation Agreement has occurred. The Participating State will be given 30 calendar days to supply information for SSBCI's analysis that was not considered at the time the instance of noncompliance or misuse was identified. In the case of disallowed or impermissible administrative expenses, the Participating State will be given 30 calendar days to demonstrate that the administrative expenses satisfy program requirements. If an instance of potential misuse is referred to the OIG for an audit, the OIG will determine the response time for its data requests.

Treasury may also allow a Participating State to replenish its SSBCI program account in the amount of

funds found to be noncompliant or misused. If Treasury approves a proposed replenishment, Treasury will allow the Participating State to un-enroll the loan or investment or remove the disallowed administrative expenses from the SSBCI account once sufficient documentation is received and reviewed by SSBCI Compliance staff. Treasury recognizes that some Participating States may not have funds available to replenish the SSBCI program account, in which case Treasury may exercise other remedies, including reducing the amount of future disbursements.

Written approval is needed for replenishment and un-enrollment. Documentation requirements and an example certification to request Treasury's approval are provided below. *Please note that Treasury's approval of any replenishment and un-enrollment does not preclude the OIG from conducting its own review of non-compliance issues to determine misuse. If the OIG determines there has been reckless or intentional misuse, recoupment in the amount of such misused funds is required*

[1]

SSBCI recognizes that Participating States may wish to un-enroll instances of misuse found by the OIG to be reckless or intentional. SSBCI will consider such requests on a case-by-case basis; however, the OIG's findings and determinations remain in place. If the OIG finds that the misuse is reckless or intentional, SSBCI will recoup the funds, as required by Section 3003(c)(1)(C)(ii) of the Small Business Jobs Act.

under the statute regardless of whether the Participating State has replenished the SSBCI program account.

Treasury may determine that the opportunity to rebut or cure is not appropriate if a Participating State's noncompliance meets any of the following criteria: (a) it was not self-reported; (b) it was widespread; or (c) it occurred after relevant guidance was provided. If any of these criteria is present, Treasury may recommend a determination of a general event of default.

If an instance of noncompliance cannot be cured in a manner satisfactory to Treasury, Treasury may issue a written notice of a general event of default to the Participating State, pursuant to Section 6.1 of the SSBCI Allocation Agreement. The written notice will give the Participating State 10 calendar days from the date of the notice to respond, in accordance with Section 6.6 of the SSBCI Allocation Agreement, and inform the Participating State that it may include any mitigating facts or circumstances, with accompanying documentation, in the response. *Process for Requesting Treasury's Approval to Replenish and Un-enroll* Documentation for the Replenishment of Loans and Investments
A Participating State must provide Treasury with a written description of each transaction and the justification for the proposed replenishment and un-enrollment. If Treasury determines the request is justified, Treasury will provide the Participating State with written conditional approval. Once the Participating State has replenished the SSBCI Program Account, the Participating State must provide the following:

1. A letter from the Participating State to the lender, investor, or third party involved in administration that informs the lender that the transaction is no longer enrolled in the SSBCI program, and that SSBCI funds no longer support the transaction. For certain transactions, as determined by Treasury, the Participating State must provide evidence that the relevant contract is no longer valid or will not be honored using SSBCI funds.

2. Accounting documentation evidencing that the Approved State Program account has been replenished.

3. A certification from the Authorized State Official that explains the reason for un-enrollment of each transaction and that the Participating State has undertaken all necessary actions and transactions, in accord with Participating State laws and requirements, to replenish the Approved State Program account.

Documentation for the Replenishment of Administrative Expenses

A Participating State must provide Treasury with written description of the administrative expenses and the justification for the proposed replenishment and un-enrollment. If Treasury determines that the request is justified, Treasury will provide the Participating State with written conditional approval. Once the Participating State has replenished the administrative expenses, the Participating State must provide the following:

1. Accounting documentation evidencing that the SSBCI program account has been replenished.

2. A certification from the Authorized State Official that explains the reason for the un-enrollment of the administrative expenses and that the Participating State has undertaken all necessary actions and transactions, in accord with Participating State laws and requirements, to replenish the SSBCI program account.

Treasury's Approval to Un-Enroll Loans, Investments, and Administrative Expenses

Treasury will review the documentation submitted following replenishment and, if Treasury determines that it is sufficient, will provide the Participating State with written approval to un-enroll the relevant transactions or administrative expenses.

Example Authorized State Official's Certification for Seeking Treasury's Approval for Un-Enrollment and Replenishment

Reference is made to the State Small Business Credit Initiative (SSBCI) Allocation Agreement dated as of [_____] (Allocation Agreement), between the United States Department of the Treasury (Treasury) and [the Participating State].

I, the undersigned as the Authorized State Official of [the Participating State], hereby certify that as of the date of this certification, [the Participating State] requests un-enrollment of the following transactions and/or administrative expenses from the Participating State's SSBCI account:

[Insert list of transactions and/or administrative expenses to be un-enrolled]

The reasons for the un-enrollment are [specify for each transaction and/or administrative expense to be un-enrolled].

I further certify that the [the Participating State] has undertaken and completed all necessary actions

and transactions, in accord with [the Participating State] laws and requirements, to deposit [$___] of non-SSBCI funds into [the Program identified under Annex 1 of the Allocation Agreement] OR [the account containing SSBCI funds allocated for Administrative Funds under Annex 3 of the Allocation Agreement]. The deposited funds will be used in accordance with the terms and conditions of the Allocation Agreement.

18. May SSBCI funds support a loan or investment to a religious establishment?

Yes, a religious establishment may receive SSBCI funds provided that the proceeds of the loan or investment are used only for a "business purpose." A "business purpose" does not include an explicitly religious purpose. SSBCI funds may not support a loan or investment used by the religious establishment for the purposes of directly supporting, assisting, or furthering an explicitly religious purpose, including, but not limited to, worship, religious instruction, or proselytization.

19. How should a state trace SSBCI funds that are allocated to a privately managed venture capital fund (VC fund) into an eligible business?

When a state allocates SSBCI funds to a VC fund, and the VC fund then combines (commingles) the SSBCI funds with private capital in a single account, it becomes important for the state to be able to trace the amount of SSBCI funds expended to each small business to confirm that SSBCI program rules and guidelines regarding private capital are being followed. There are a variety of ways to do this (the below list is not exhaustive):

- A VC fund may designate a subset of its overall portfolio as its "SSBCI portfolio." For example, the SSBCI portfolio could consist of the investments closed after the state has allocated SSBCI funds to the VC fund. The SSBCI portfolio investments must comply with all program rules.
- A VC fund may invest SSBCI funds pro rata in all of its investments, i.e., proportionately with funds obtained from other limited partners. All investments must comply with all program rules.
- A VC fund may allocate a larger portion of SSBCI funds to certain investments. All investments must comply with all program rules.

In their written records, states should be explicit about the overall allocation method used and should record the exact amount of SSBCI funds invested in each small business investment at the time the investment is made. The state should also record the amount of any VC fund management fees charged to its SSBCI allocation. VC fund management fees charged to SSBCI funds are considered administrative expenses and are subject to program rules (please refer to FAQ on Program Income and Administrative Expense).

Additionally, private lenders or investors must bear 20 percent or more of the risk of loss in any transaction that uses SSBCI funds. If a VC fund is using SSBCI funds as part of staged funding of a single investment, when SSBCI funds are invested, 20 percent of the capital-at-risk must be from private sources.

20. When can private capital be counted towards a state's private leverage ratio?

Private capital invested in a small business must have been the "cause and result" of the SSBCI investment in the VC fund to be included in the transaction-level private leverage ratio.

Generally, small business investments closed by the VC fund manager before the state's SSBCI funds were received by the VC fund should not be included in the SSBCI portfolio. A pre-SSBCI-closing private capital investment may be counted towards the state's private leverage ratio in special circumstances when a state can demonstrate through documentation that the private capital investment was the "cause and result" of the forthcoming SSBCI funds. For example, SSBCI has previously allowed a pre-SSBCI-closing private capital investment to count towards the state's private capital ratio when the state supplied board minutes evidencing the causal connection.